

FEDERAL MARITIME COMMISSION

DOCKET NO. 13-04

STREAK PRODUCTS, INC., and SYX DISTRIBUTION, INC.

v.

UTi, UNITED STATES, INC.

ORDER FOR RESPONDENT TO SUPPLEMENT THE RECORD

I. ORDER TO SIGN INTERROGATORY RESPONSES.

Commission Rule 205 governs interrogatories in Commission proceedings. It states:

(b) *Answers and objections.* (1) *Responding party.* The interrogatories must be answered: . . . (ii) If that party is a public or private corporation, . . . by any officer or representative, who must furnish the information available to the party.

*

*

*

(3) *Answering each interrogatory.* Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath.

*

*

*

(5) *Signature.* The person who makes the answers must sign them, and the attorney who objects must sign any objections.

46 C.F.R. § 502.205.

Streak attached the following exhibits to Streak Products, Inc.'s Motion to Compel, UTi, United States, Inc. to Respond to Discovery Requests: (1) Exhibit A – Respondent UTi, United States, Inc.'s Objections and Responses to Complainant's First Interrogatories and Request for Production of Documents (signed by counsel May 28, 2013); (2) Exhibit B – Letter dated

December 13, 2013, from UTi's counsel to Streak's counsel setting forth supplemental responses to the First Interrogatories; (3) Exhibit C – Respondent UTi, United States, Inc.'s Objections to Complainant's Second Interrogatories and Request for Production of Documents (signed by counsel January 6, 2014). The responses, which have now been used in the proceeding, *see* 46 C.F.R. § 502.2(k), and are part of the record, are not signed under oath as required by Rule 205. Therefore, it is hereby

ORDERED that on or before April 1, 2014, UTi sign its responses as required by Commission Rule 205. In addition to serving the signed responses on Complainants, UTi is ordered to file a copy of each with the Secretary. The documents that were produced with the responses should not be filed with the Secretary.

II. ORDER TO SUPPLEMENT INTERROGATORY RESPONSES.

UTi attached the declaration of George P. Hassapis, Assistant General Counsel of UTi Worldwide Inc., the parent company of UTi, United States, Inc., to its Motion to Dismiss filed May 27, 2013. The declaration states in part:

A. UTi's Failure to Maintain Published Tariffs for the FCL and LCL Shipment Services It Rendered to Streak Products from 2009 to 2011.

3. From 2009 to 2011, UTi had no published tariff rate in effect for any of the FCL or LCL shipment services it provided to Streak Products. Throughout the parties' course of dealing, Streak Products and UTi would mutually agree as to the proper rates for the various shipment services rendered by UTi without any reference to published tariffs. Each time, Streak Products paid in full for all ocean transportation services provided by UTi.

4. The so-called published tariff rate that Streak Product's expert used when analyzing UTi's FCL freight invoices was a commodity-specific rate for computer parts. That rate was not a valid tariff because it contained no effective date and no expiration date. More importantly, even if the alleged rate were a valid tariff, it did not apply to the port pairs between which UTi rendered transportation services to Streak Products from 2009 to 2011, and therefore could not have applied to the FCL shipments at issue in the above-captioned matter.

B. UTi's Voluntary Self-Disclosure of its Tariff Publishing Violations to the Commission's Bureau of Enforcement.

5. After a recent top-to-bottom review of its FMC-regulated activities, UTi discovered that the rates it charged to various customers, including Streak Products, over the past five years were not properly published in a tariff or contained in a non-tariff option (e.g., an NVOCC service arrangement or negotiated rate arrangement).

(UTi's Motion to Dismiss the Verified Complaint of Streak Products, Inc., Attachment – Declaration of George P. Hassapis in Support of UTi, United States, Inc.'s Motion to Dismiss the Verified Complaint of Streak Products, Inc. (Hassapis Declaration).)

In several of its May 28, 2013, responses to Streak's interrogatories, UTi states or implies that it transported shipments for Streak. (Respondent UTi, United States, Inc.'s Objections and Responses to Complainant's First Interrogatories and Request for Production of Documents, Interrogatory No. 4 ("UTi did not transport any shipments on behalf of Streak without Streak's knowledge"); Interrogatories No. 6, 8, 9, 10 (UTi "transmitted [shipments] on behalf of Streak").) In several supplemental responses to the same interrogatories set forth in counsel's letter dated December 13, 2013, UTi implies that it did not transport shipments for Streak. (December 13, 2013, letter, response to Interrogatory No. 9, 10 ("UTi responds that it is unable to identify any instances of UTi charging Streak for ocean transportation services, or for any other product or service."); Interrogatory No. 13 ("UTi supplements its response to Interrogatory 13 to state that UTi did not charge Streak for any FCL shipments during the relevant time period."); Interrogatory No. 14 ("UTi supplements its response to Interrogatory 14 to state that UTi did not charge Streak for any LCL shipments during the relevant time period").)

To clarify the record, it is **ORDERED** that on or before April 1, 2014, UTi serve and file responses under oath to the following questions:

1. When used in responses to Interrogatories No. 6, 8, 9, and 10, what is the meaning of the term "transmitted"?
2. On October 23, 2013, Streak was ordered to file "a chart summarizing information about each shipment carried by UTi on which Streak contends UTi violated the Shipping Act as alleged in the Complaint." *Streak Products, Inc. v. UTi, United States, Inc.*, FMC No. 13-04 (ALJ Oct. 23, 2013) (Order to File Summary Chart). The Secretary received the chart on December 4, 2013.
 - A. Did UTi transport the FCL and LCL shipments listed in the summary chart?
 - B. Did UTi transport the FCL and LCL shipments listed in the summary chart for Streak Products?
 - C. If UTi did not transport the shipments for Streak Products, identify the shipper or shippers¹ for which UTi transported the shipments.

¹ "The term 'shipper' means – (A) a cargo owner; (B) the person for whose account the ocean transportation of cargo is provided; (C) the person to whom delivery is to be made; (D) a shippers' association; or (E) a non-vessel-operating common carrier that accepts responsibility for payment of all charges applicable under the tariff or service contract." 46 U.S.C. § 40102(22).

3. The Hassapis Declaration states: “UTi had no published tariff rate in effect for any of the FCL or LCL shipment services it provided to Streak Products. Throughout the parties’ course of dealing, Streak Products and UTi would mutually agree as to the proper rates for the various shipment services rendered by UTi.” (Hassapis Declaration ¶ 3.)
 - A. What “FCL [and] LCL shipment services” did UTi provide to Streak Products?
 - B. Did the “FCL [and] LCL shipment services” include the shipments listed in the summary chart prepared by Streak Products?
 - C. If UTi did not provide “FCL or LCL shipment services” to Streak Products, to what entity did UTi provide the FCL or LCL shipment services to which Hassapis Declaration ¶ 3 refers?
 - D. Did UTi agree with Streak Products for the rates for the shipment services rendered by UTi? If not, identify the entity with which UTi agreed for the rates for the shipment services rendered to which Hassapis Declaration ¶ 3 refers.
 - E. If the shipment services to which Hassapis Declaration ¶ 3 refers were provided to an entity other than Streak Products, why does the Hassapis Declaration state that shipment services were rendered to Streak Products and UTi and Streak Products agreed to rates for those services?
4. The Hassapis Declaration states: “Streak Products paid in full for all ocean transportation services provided by UTi.” (Hassapis Declaration ¶ 3.)
 - A. What ocean transportation services did UTi provide to Streak Products?
 - B. Did these ocean transportation services include transportation of the FCL and LCL shipments listed in the summary charts prepared by Streak Products and received by the Secretary on December 4, 2013?
5. The Hassapis Declaration states: “UTi rendered transportation services to Streak Products from 2009 to 2011.” (Hassapis Declaration ¶ 4.)
 - A. Did UTi transport cargo for Streak Products from 2009 to 2011? If not, what transportation services did UTi render to Streak Products from 2009 to 2011?
 - B. Did the transportation services that UTi rendered to Streak Products include transportation of the FCL and LCL shipments listed in the summary charts prepared by Streak Products and received by the Secretary on December 4, 2013?

- C. If the transportation services to which Hassapis Declaration ¶ 4 refers were not rendered to Streak Products, to what entity were they rendered and what services were rendered?
 - D. If Hassapis Declaration ¶ 4 refers to an entity other than Streak Products, why does the Declaration state that UTi rendered transportation services to Streak Products from 2009 to 2011?
6. The Hassapis Declaration states that it charged rates to Streak Products. (Hassapis Declaration ¶ 5.)
- A. For what services did UTi charge rates to Streak Products?
 - B. Did these rates include charges for the FCL and LCL shipments listed in the summary charged prepared by Streak Products and received by the Secretary on December 4, 2013?
 - C. If UTi did not charge Streak Products rates for any services:
 - i. What entity was charged rates for the services to which Hassapis Declaration ¶ 5 refers?
 - ii. Why does the Declaration state that UTi charged rates to Streak Products?



Clay G. Guthridge
Administrative Law Judge